

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, MICHAEL)
SAURO, WALTER NOFFSINGER, ROSA)
DAVIDSON, MICHAEL KELLY, TITON)
HOQUE, JANET GELPHMAN, THANH)
DO,)

Plaintiffs,)

v.)

Case No. 1:20-cv-00969-LY

INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)

Defendant.)

DEFENDANT'S OPPOSED MOTION
TO MAINTAIN CONFIDENTIALITY DESIGNATIONS

EXHIBIT 2

Declaration of Sam Ladah

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INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	
)	

DECLARATION OF SAM LADAH

I, Sam Ladah, declare and state as follows:

1. I have been employed by International Business Machines Corporation (“IBM” or “Company”) since approximately 2002. I am currently the HR Vice President for IBM Global Markets. Prior to holding that role, I was the HR Vice President for IBM Global Technology Services from February 2018 through May 2020. From February 2015 to February 2018, I was the HR Vice President for the Cloud group, and from October 2015 through July 2017 I was also the Vice President of Talent. I have also held other HR Director and Vice President positions prior to those.

2. I make this statement based on my personal knowledge. If called as a witness, I could and would competently testify to the facts contained here.

3. IBM has multiple separate business groups or segments that provide distinct products and services and operate in different competitive environments. Each business group is made up of multiple sub-business units, which in turn have many organizations and managers

within them. Those business groups have also evolved significantly over time and continue to evolve.

4. During the time period at issue here, there were several distinct business groups, each with multiple sub-units beneath them. For example, Global Business Services (“GBS”) served as IBM’s global consulting business and has three primary business areas: Cloud Application Innovation, Cognitive Process Transformation, and Digital Strategy. Global Technology Services (“GTS”) provided IT infrastructure and platform services and had several primary sub-units including Infrastructure Services and Technical Support Services. IBM’s Cloud and Cognitive Software business group, which evolved out of IBM’s Software, Cloud and then Hybrid Cloud Groups had software, platforms, and solutions that help clients to migrate and manage cloud workloads and gain insight from data and analytics using AI. IBM’s Systems Group is IBM’s hardware business and had Servers and Storage Systems as its primary sub-units.

5. In addition to these groups and sub-units that develop and deliver products and services, IBM also has a separate business group devoted to selling IBM products and services called Global Markets. Global Markets grew out of what had been IBM’s Sales & Distribution (“S&D”) group. Its teams are divided along geographic, industry, and brand lines and manage country-based operating units to service IBM’s global clients locally.

6. IBM also has several shared services teams, such as Legal, Finance, and Human Resources, that support each of the business groups and their Senior Vice Presidents (“SVPs”) and General Managers (“GMs”). Each business group also has its own Vice President of Finance, Controller, and Human Resources Leader. Some of these shared services teams also

have multiple segments within them. For example, the Talent organization, which I previously led, is a sub-unit within HR.

7. In addition to the HR and Talent staff at the corporate level, each business group also has its own HR and Talent teams. I have led several of these teams. These teams develop and provide management in each of the business groups, such as the SVPs and GMs, with data, benchmarking information, and tools to assist them in executing on their individual missions and meeting their financial objectives. The business groups and their sub-units then make their own decisions concerning their workforce, resource budgeting, and planning.

8. I understand that Plaintiffs seek to have a number of documents relating to IBM's HR and Talent strategies over the past five to six years taken out from under the Confidentiality and Protective Order in this case ("Protective Order"), which would mean that they could be made public. I provide this declaration in support of IBM's request seeking to have the Protective Order enforced and in opposition to Plaintiffs' request.

9. While I have not reviewed all the documents Plaintiffs are challenging, I have reviewed all the documents cited in this declaration, and this declaration describes the reasons that those documents and documents of a similar nature are confidential. I was either a sender or a recipient of all the documents described in Paragraphs 10 through 18 below. In those paragraphs, I describe the ways in which the cited documents and similar documents are confidential and how their disclosure could cause competitive harm.

10. IBM operates in a highly competitive industry, both for customers and for talent. As to the first, technology companies are constantly vying to improve their market shares and position themselves to best attract customers. Details about IBM's current and recent market strategies, how it assesses its workforce and job roles, and where it is investing resources would

be of great interest to IBM's competitors. As to the second, technology companies are constantly vying for candidates who have the most current, high-demand technical skills. As a result, recruiters seek and exploit any information they can glean about a competitor to target its employees for recruitment.

11. Thus, documents that contain operational data regarding employee headcounts across the Company or by, for example, role, level, geography, business group, race, or gender would be of great interest to IBM's competitors. IBM does not report externally or publicize such information. Indeed, in its Annual Reports, IBM reports only total global headcount numbers. Internally, IBM's Talent group generates reports which contain detailed workforce data for the Company's business and HR leaders to use and prepares summaries of additional data points upon request. For example, documents such as the "People Scorecard" and related internal analyses, such as those found at Bates Nos. IBMK-000088245 – IBMK-000088246, contain detailed data and analyses regarding headcount changes and targets, hiring and attrition (including among executives and managers), percentages of employees on performance management programs and low-performance exits, the number of employees with declining skills, and other sensitive data. These types of data points, reports, and internal discussions are closely held within the Company and certainly not shared externally. Likewise, disclosure of documents such as the emails found at Bates Nos. IBMK-000148604 – IBMK-000148605 (which relate to IBM's operations and hiring needs outside the United States) would equip IBM's competitors with information regarding what markets IBM is focusing its population changes on during any given period of time. Competitors would be very interested in such information, even if five or six years old, as it would give them insight into how and where IBM

has been investing resources and where it planned to invest in the future. They could use such information to IBM's competitive disadvantage.

12. Documents that contain discussions about what differentiates IBM (and its business groups) as an employer or that detail IBM's own assessment of and/or its planning for its workforce and its people value proposition would be a valuable resource for its competitors and their recruiters. When I speak of a company's people value proposition, I am talking about what distinguishes a company as an employer. It consists of various components, including, but not limited to:

- a. the jobs the employees hold—the nature of the roles, whether the work is entry level or requires greater experience, whether the work is challenging and rewarding for an employee at a particular experience level, and its value to the organization and its mission;
- b. how employees are assessed and their opportunities for development and advancement;
- c. the financial package that the organization provides to the various roles in the different business groups and in different locations, including any benefits and incentive payments in addition to base pay; and
- d. the work environment, including where the work is done.

Just as IBM is always interested in knowing what its competitors are doing from a HR/Talent strategy perspective and how they assess their workforces and skills, so too would IBM's competitors be very interested in—and could exploit to their advantage—non-public details about IBM's various HR and Talent strategies as well as self-assessments and decision-making around these issues.

13. While IBM shares information about new HR policies, practices, and procedures within the Company when they are implemented, it does not share within the Company and certainly not publicly, the competitive and strategic analysis, internal discussions, or decision-making underlying those policies, practices, and procedures. Thus, emails, draft presentations, and proposals that reflect such strategic thinking and planning around sensitive HR issues and initiatives, including skills, recruiting, talent planning, retention, performance management, compensation, and employee engagement are closely held within IBM and are certainly not shared externally. Such details about IBM's HR and Talent analysis, planning, and decision-making over the past five or six years remain relevant and would inform IBM's competitors about IBM's current thinking and decision-making processes. IBM's competitors could profit competitively from having knowledge of IBM's unique HR and Talent strategies and decision-making processes, to IBM's detriment.

14. Just as technology has evolved dramatically in recent years, the skills needed to perform the work done in IBM's various business groups have also changed dramatically. In the last few years, our Talent group has worked on several initiatives with the business groups designed to ensure that they have the employees with the skills and proficiency levels that are needed to meet their individual business needs. IBM considers the decision-making and analyses associated with these initiatives to be confidential. For example, the email exchange found at Bates Nos. IBMK-000146724 – IBMK-000146726 contains details regarding IBM's efforts to change its population of employees in a particular role in order to improve the skills of the population and the ratio of employees in that role with different experience levels. Documents that reflect this strategic analysis—that identify gaps in skills or particular employee populations within IBM or detail strategies around reskilling, learning and development, or recruiting and

hiring skills from the outside—would be of great interest to IBM’s competitors and are not revealed publicly. This information is useable by competitors whether it is current or five or six years old, as it is directional and offers information that a competitor could co-op. Thus, its disclosure outside IBM could harm IBM competitively.

15. Talent partners also assist the business groups and their sub-units in developing pipelines of skilled employees ready for promotion through the use of entry-level hiring. IBM refers to entry-level hiring as “early professional hiring,” regardless of a person’s age. IBM also classifies its positions into bands. Non-executive bands range from 1 to 10, with 10 being the highest level. We classify new, regular hires based on the band into which they are hired. Early professionals—or entry-level hires with little to no experience in the industry—are hired at lower bands, while experienced hires are hired at higher bands. IBM does not publicize its hiring initiatives or processes, and these types of documents are kept confidential. For example, emails such as those found at Bates Nos. IBMK-000056328 – IBMK-000056330, which reflect the allocation of early professional hires into development tracks for developer, consultant, seller, and data scientist roles, as well as reflect the U.S. states and markets in which IBM was focused, contain non-public information that IBM considers and treats as confidential because competitors could use it to put IBM at a competitive disadvantage. For example, competitors could use this information to inform how they classify or place their own new hires or in efforts to recruit talent away from IBM. While this particular document is from 2016, IBM continues to hire along similar tracks today and thus competitors could still use this information to unfairly compete with IBM.

16. Documents concerning IBM’s hiring prerogatives more broadly are also confidential. For example, documents containing details regarding hiring freezes, their duration,

and the business groups and personnel impacted by such freezes contain information that is closely held within IBM and certainly not shared with the public. The email exchange found at Bates No. IBMK-000088551 is illustrative. These emails—which are marked in the subject line as “*Confidential” and headed with “PLEASE DO NOT FORWARD”—reflect confidential directives from the Chief Human Resources Office (“CHRO”) regarding a hiring freeze in 2017. Although from 2017, IBM’s competitors could use this clearly confidential and non-public information to IBM’s competitive disadvantage as it reflects executive decision-making processes for implementing such actions.

17. Likewise, documents reflecting IBM’s measures to retain talent contain non-public, sensitive information that would be of great interest to IBM’s competitors in their own hiring/retention efforts. The email exchange found at Bates Nos. IBMK-000043301 – IBMK-000043311 is illustrative. These emails reflect high-level executive strategy and decision-making processes in response to the publication of an article by Business Insider remarking on certain “rock star” IBM employees. IBM’s action plan and response to the obvious retention risks posed by the publication is non-public information that could be used by competitors to IBM’s disadvantage today.

18. Finally, internal Talent planning often involves discussion and analysis of publicly available information about a competitor’s workforce. When such information is available, it can provide insight, for example, into a competitor’s labor cost structure. This is particularly important to our services businesses—GBS and GTS—which like a law firm, compete based on leveraged labor costs. How IBM assesses such competitive intelligence is only shared within IBM on a need to know basis and certainly not externally, as its public disclosure would reveal where IBM perceives potential weaknesses or vulnerabilities relative to

its competition. For example, the emails found at Bates Nos. IBMK-000065323 – IBMK-000065327 reflect internal discussions among senior HR and corporate executives in reaction to a Wall Street Journal article that reported on the workforce demographics of a major competitor of IBM's services businesses. While these documents are from 2016, they reflect IBM's strategic thinking about how to effectively compete with this particular organization and thus could still be used competitively to IBM's detriment today.

19. In connection with preparing this declaration, I also reviewed other documents that I did not send or receive and which I had not previously seen. These documents consist of communications between high-level executives at the Company, including individuals on the list below:

- a. Virginia Rometty – Chief Executive Officer (2012 to 2020)
- b. Diane Gherson – Chief Human Resources Officer (2013 to 2020)
- c. Martin Schroeter – Chief Financial Officer (2014 to 2017); Senior Vice President, Global Markets Group (2018 to 2020)
- d. James Kavanaugh – Senior Vice President, Transformation & Operations (2015 to 2018); Chief Financial Officer (2018 to present)
- e. Ken Keverian – Senior Vice President, Corporate Strategy (2014 to 2020)
- f. Erich Clementi – Senior Vice President, Global Markets (2014 to 2018); Chairman, IBM Europe (2014 to 2019)
- g. Jon Iwata – Senior Vice President, Marketing and Communications (2008 to 2017); Senior Vice President, Chief Brand Officer (2017 to 2018)
- h. Alan Wild – Vice President, Employee Relations & Engagement (2011 to 2018)

- i. Carrie Altieri – Vice President, Communications – HR (2015 to present)
- j. Annette Favorite – Vice President, Talent Management (2013 to 2015)
- k. Deborah Butters – Vice President, People Strategy & Talent Management (2014 to 2016)
- l. Thomas Fleming – Vice President, Human Resources, Sales & Distribution (2014 to 2016); Vice President, Human Resources, Global Markets (2017 to 2020); Vice President, Human Resources, Cloud Platform (2020 to present)
- m. Obed Louissaint – Vice President, People & Culture, Watson & Cognitive Solutions (2015 to 2019); Vice President, Talent (2019 to 2020); Senior Vice President, Transformation and Culture (2020 to present)
- n. Thomas Stachura – Vice President, Talent Solutions & People Analytics (2015 to present)
- o. Edward Barbini – Vice President, Corporate Communications (2016 to present)
- p. Carol Gordon – Vice President, Global Talent Acquisition (2014 to 2016); Vice President, People & Culture, IBM Digital Business Group & IBM Marketing (2017 to 2018); Vice President, Human Resources, IBM Hybrid Cloud (2018 to 2020); Vice President, Human Resources, IBM Global Technology Services (2020 to present)
- q. Zane Zumbahlen – Vice President, Human Resources, IBM Japan (2015 to 2018); Vice President, Human Resources, Software as a Service (2018 to

2019); Vice President, Human Resources, Red Hat HR Acquisition
Integration Leader (2019 to 2020)

20. IBM treats internal communications between high-level executives such as these individuals as confidential. In my experience, these types of communications between executives are sent with the expectation that such communications would not be circulated to others within the Company—and certainly not publicly. The documents at issue here generally reveal C-suite level Company communications reflecting strategic assessments and decision-making processes concerning workforce and other initiatives that would be of great interest to IBM's competitors. Moreover, even though some of the documents are five to six years old, they provide insight into IBM's decision-making processes that are still being used today and thus could be used by competitors to undermine IBM. Examples of these types of documents include the following categories:

21. Skills Initiatives: IBM does not circulate internal C-suite communications discussing skills initiatives, either internally or externally. Those documents, including documents like the email exchange found at Bates Nos. IBMK-000065453 – IBMK-000065458, which provides detailed data and analysis regarding the number of employees who had been exited from IBM globally based on skills, could be used by IBM's competitors to mirror IBM's efforts or otherwise inflict competitive harm. Even though these emails are from 2016, competitors could still use them to compete with IBM in trying to attract talent away from IBM and retain their own talent.

22. Performance Management: Executives' internal communications concerning IBM's performance management systems and processes are also kept confidential and closely held. For example, documents such as the emails found at Bates Nos. IBMK-000046900 –

IBMK-000046903, Bates Nos. IBMK-000042193 – IBMK-000042202, and Bates Nos. IBMK-000133500 – IBMK-000133504 detail the former CEO’s and CHRO’s considerations regarding changes to IBM’s performance review and management processes. Much of the information in these emails reflects IBM’s past and current thinking around performance management, information that is kept closely held within IBM and that could be used by IBM’s competitors, for example, to recruit talent away from IBM, copy IBM’s ideas for performance management, or otherwise unfairly compete with IBM using its confidential documents. Likewise, emails concerning employee performance reviews and self-evaluations such as the emails found at Bates Nos. IBMK-000088252 – IBMK-000088255 often contain sensitive employee-specific performance information that IBM views as confidential, does not share with other employees, and certainly does not share externally.

23. Headcount Reductions: In recent years, the revenue and resulting financial shortfalls in some of the various business groups have necessitated headcount reductions both in the United States and elsewhere. A business group may reduce headcount in one part of its business through what IBM calls a “resource action” while hiring in another part of its business. IBM does not publicize details around resource actions, as competitors would be very interested in knowing what units or markets IBM is downsizing as much as they would like to know in what areas IBM is hiring/growing. Documents such as the email exchange found at Bates Nos. IBMK-000089760 – IBMK-000089762, which reflects high-level executive decision-making processes regarding headcount reductions in a particular sub-group of IBM, and Bates No. IBMK-000044836, which reflects particular dollar amounts associated with headcount reductions, include information that is closely held within IBM and certainly shared externally. Likewise, documents such as the email exchange found at Bates Nos. IBMK-000057028 –

IBMK-000057032, reflect IBM's internal decision-making processes and self-assessments regarding certain exclusions from resource actions. Even though these documents are five to six years old, public disclosure of these types of confidential documents would be highly prejudicial to IBM and its employees even today as competitors could use them to inform their own hiring and termination efforts and to recruit talent away from IBM.

24. Contracting: IBM's decision-making process over what types of work to source internally and externally is also kept confidential and could also be used competitively against IBM. For example, the emails found at Bates Nos. IBMK-000091046 – IBMK-000091047 provide insight into the circumstances under which former employees were re-hired by IBM as contractors, and further reflects the CEO's internal decision-making processes and discussions regarding those engagements. Among other things, IBM's competitors could use this type of information to try to negotiate with contractors and undercut IBM.

25. Employee Compensation: Communications between high-level executives about employee compensation strategy likewise are not shared internally or externally. Documents that discuss employee compensation strategy, such as the email exchange found at Bates No. IBM-000041625 – IBMK-0000041627, which states on its face that the information the CEO and CHRO is discussing is "highly sensitive" and should not be "freely distributed," even to SVPs, could be mined by competitors to recruit talent away from IBM and otherwise unfairly compete with IBM. Despite the fact that the emails are from 2015, this type of information would still be of great interest to IBM's competitors today.


26. Business Group Planning Documents: Information pertaining to each business group's competitive challenges is also particularly sensitive because competitors could easily use such information to identify and seize upon IBM's perceived areas of weakness. For example,

the presentation found at Bates Nos. IBMK-000049841 – IBMK-000049855 contains highly confidential, detailed planning materials and data points for IBM’s GTS business group to address business challenges. This document reflects detailed data and models regarding the competitiveness of GTS’s employee compensation, health benefits, and 401k benefits, which information IBM’s competitors could use to IBM’s competitive disadvantage. Although from 2015, this planning document is forward-looking through 2018, and GTS is still addressing similar issues today. This type of proprietary business information and internal analysis of labor competitiveness issues could be used by competitors to IBM’s detriment. Similarly, emails between high-level executives such as the exchange found at Bates No. IBMK-000073352 that discuss a particular segment of the business with problems with its labor pyramid—*i.e.*, the ratio of more experienced employees to less experienced employees (and associated cost considerations)—could be used by competitors to locate perceived vulnerabilities in IBM’s workforce and to recruit talent away from IBM today.

27. Communication Strategy/Other Executive Communications: Finally, internal discussions between high-level executives concerning strategies for communicating with the media and/or other topics, such as Bates Nos. IBMK-000068586 – IBMK-000068587 are generally expected to be closely held and are not circulated either throughout the Company or externally.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 26, 2021
Armonk, NY



SAM LADAH